IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1095 OF 2004

Shri Nivrutti Baliram Handke ... Appellant (Ori.Plaintiff)

V/s

Shri Sant Gadge Maharaj Dnyanewadi Sangh Trust, Pandharpur. ... Respondents (Ori.Defendants)

Mr. M.A. Patil for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 28TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur dated 5.2.2004 dismissing the appeal of the appellant and confirming the judgment and order passed by the Joint Civil Judge, Jr.Divn., Pandharpur dated 25.9.1998 dismissing the plaintiff's suit for perpetual injunction against the defendant.

2. I have heard the learned counsel for the appellant. Perused the record.

The plaintiff filed the suit for perpetual injunction

simplicitor on the ground that he is tenant of the suit property and defendant is the landlord in respect of the suit property consisting of 10 teen sheets on Western side of property CTS No. 189/2/1 at Pandharpur popularly known as Sidheshwar Math. It is a Trust property. According to the plaintiff, he is tenant since several years and has paid rent upto date to the defendants but no rent receipt were issued, however, he was compelled to file the suit as the defendants are obstructing his possession.

The defendants challenged the suit on the ground that the plaintiff is rank trespasser and not tenant. According to the defendants, the suit property was given to one Banubai, a old woman, suffering from paralysis, was allowed to reside in the premises and she also used to look after the management of the Trust property. The plaintiff used to visit her to look after her and subsequently without permission of the landlord started staying there and hence he has no right, title and interest to stay in the property.

3. The learned Trial Judge after hearing the dispute on merits came to the conclusion that the suit in its present form is not maintainable. The plaintiff failed

to establish his lawful possession in the suit property and also failed to prove that he was unlawfully obstructed by the defendants landlord and, as such, the suit came to be dismissed.

4. The appeal was preferred to the Court of Addl. District Judge, Pandharpur, who, after hearing both parties, dismissed the appeal and hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. It is also conceded that there is absolutely no documentary or other evidence to show that the appellant is lawful tenant in the suit premises. In other words, the theory of tenancy is not supported by any evidence on record and, therefore, has been rightly discarded by both the Courts below.

6. The learned counsel for the appellant sought to rely on the ruling of this Court in the case of **Govindbhai Ramjibhai Chauhan v/s Gokulchand Juthalal Agrawal, reported in 1996 (2) Mh.L.J. 1062,** wherein it is held that the trespasser in settled possession can seek temporary injunction to protect his possession till he

is dispossessed in accordance with the law. In my considered view, this ruling cannot be made applicable to the present set of facts because the appellant plaintiff is also seen to be a rank trespasser and cannot be said to be in settled possession within the meaning of the ruling of the said case. It is amply evident that one Banubai was in settled possession and in permissive user of the suit premises and, therefore, at the most it can be said that said Banubai is in settled possession of the premises who can seek benefit of the said ruling. However, the plaintiff being rank trespasser, is obviously taking disadvantage of his acquaintance with said Banubai on the pretext that he was looking after the old lady. Therefore, in view of this position, the appellant plaintiff cannot be held entitled to seek protection under the guise of "settled possession" as contemplated by the above quoted ruling of this Court.

In the result, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 1366 of 2004 also stands dismissed with no order as to costs.

(P.V. Kakade, J.)